GOVERNMENT OF NEWFOUNDLAND AND LABRADOR

# LAND CLAIMS POLICY

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GOVERNMENT OF NEWFOUNDLAND AND LABRADOR

# POLICY

REGARDING

# ABORIGINAL LAND CLAIMS

Intergovernmental Affairs Secretariat
Native Policy Unit

THE PREMIER

THE GOVERNMENT OF THE PROVINCE
OF NEWFOUNDLAND AND LABRADOR

In 1980, on the invitation of the Government of Canada, the Government of Newfoundland and Labrador agreed to participate with the Federal Government in land claims negotiations with the LIA & NMIA in Labrador.

The Federal Government has recently announced a new Land Claims Policy. In response to the new federal policy, the Government of Newfoundland and Labrador has reassessed its approach to land claims negotiations. The attached document outlines the policies and principles on which we will approach the tripartite negotiating process.

A primary objective in the development of the Government's policy on land claims has been the maintenance of a reasonable balance between the rights and aspirations of the Native groups on the one hand, and the rights and interests of other citizens of the Province on the other. We feel this policy strikes that reasonable balance and with federal participation it can form the basis of successful land claims negotiations with the Inuit and Innu of Labrador.

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## TABLE OF CONTENTS


I. INTRODUCTION . . . . . 1

Objectives and Principles . . . . . 2

II. PROCESS OF LAND CLAIMS NEGOTIATIONS . . . . . 3

Presentation and Assessment . . . . . 3
Bilateral Discussions . . . . . 4
Tripartite Negotiations . . . . . 4

III. ELEMENTS OF A POTENTIAL COMPREHENSIVE CLAIM SETTLEMENT 5

Lands and Resources . . . . . 5
Financial Elements . . . . . 10
Provincial Programs and Services . . . . . 10
Other Components . . . . . 11

IV. CONCLUSION . . . . . 12

# GOVERNMENT OF NEWFOUNDLAND AND LABRADOR

# POLICY ON ABORIGINAL LAND CLAIMS

## INTRODUCTION

In 1973 the Government of Canada announced it was prepared to negotiate comprehensive land claims settlements with native people in Canada who could demonstrate aboriginal use and occupancy of specific areas of the land, from time immemorial. This policy was directed toward native people who had never entered into a treaty relationship with the Crown, and whose interests in the land were never abrogated or superseded by law. The basis of the 1973 federal policy was that all aboriginal title or claims to land were to be exchanged in return for the specific rights and benefits of a land claim settlement.

The Labrador Inuit Association (LIA), representing the Inuit of Labrador, and the Naskapi-Montagnais Innu Association (NMIA), representing the Naskapi and Montagnais Indians of Labrador, submitted claims to the Government of Canada in 1977 on the basis of continued use and occupancy of lands and resources in Labrador, from time immemorial. These claims were accepted by the federal government as a valid basis for negotiation, in accordance with the 1973 federal policy statement on aboriginal land claims. At the invitation of the federal government, the province agreed to participate in a final settlement of the LIA and NMIA claims according to the 1973 federal policy.

In December 1986, the federal government announced a new

comprehensive land claims policy. This document re-affirmed the essence of the previous policy but introduced several new components. The purpose of this provincial document is to outline the policy of the Government of Newfoundland and Labrador for negotiation of aboriginal land claims involving the province, the federal government and the aboriginal claimants. It is not a statement of law, but rather a policy framework within which land claim negotiations may proceed.

## Objectives and Principles

The province's prime objective in participating in the land claims process is to contribute towards the effective and final settlement of aboriginal claims to territory within the province. Such a settlement is necessary to enable the long term economic and social development of the province as a whole, and to contribute to the economic, social and cultural development of the native claimants in the settlement area. Within the context of these overall objectives, the following principles will guide the province's policy:

(1) Equitable and effective settlement of aboriginal claims shall be achieved through negotiation.

(2) Negotiations shall be comprehensive and shall involve the native organization(s), the federal government and the province.

(3) Negotiations shall lead to a certain, precise and final

settlement of the LIA and NMIA claims in the province such that no further claims shall arise in the future.

(4) Negotiations shall facilitate the economic, social and cultural development of the native claimants in the settlement area, including but not restricted to the pursuit of traditional land use and occupancy.

(5) Negotiations shall recognize and protect the rights and interests of all residents of the province, including third party interests within the settlement area.

(6) Negotiations shall be consistent with the broad economic and social objectives of the province.

## PROCESS OF LAND CLAIMS NEGOTIATIONS

### Presentation and Assessment

Although land claims are made against the federal government, many of the elements associated with a claim settlement are within provincial jurisdiction. Before the province agrees to participate in land claims negotiations, claims presentations must be carefully assessed to ensure that they meet the fundamental criteria of aboriginal use and occupancy of the land, from time immemorial, prior to European discovery and the establishment of sovereign jurisdiction. Such assessment shall be of a general nature and shall not constitute

a legal opinion as to the existence or non-existence of any legal right or claim.

**Bilateral Discussions**

Prior to tripartite negotiations involving the province, the federal government and the native claimant organizations, a bilateral agreement between the province and the federal government should be concluded concerning mutual roles and responsibilities in the negotiation and settlement of comprehensive land claims.

**Tripartite Negotiations**

Framework Agreements will be negotiated by the province, the federal government and the native group concerned, as a preliminary stage in the negotiation process. A Framework Agreement should include the scope, parameters and the priority of items to be discussed in the course of detailed tripartite negotiations. A satisfactory Framework Agreement should also provide a context conducive to effective negotiation of the specific elements of the claim. This context should include agreement on the issues of eligibility criteria, the means of achieving certainty and finality of settlement, and protection of third party interests.

The criteria for eligibility must be both comprehensive and specific so as to ensure that no future land claims could be presented by individuals or organizations in Labrador asserting

Inuit or Naskapi-Montagnais ancestry. As well, the rights of aboriginal peoples with respect to land and resources throughout the entire mutually recognized settlement area must be strictly defined so that settlements reached are certain, precise and final.

Certainty and precision can be achieved by the surrender of all aboriginal claims which relate to land and resources throughout the claim area in return for the grant of defined rights in specific areas and other defined rights applicable to the entire settlement area. The definition of these rights is an important objective to be achieved during the process of land claims negotiations.

## ELEMENTS OF A POTENTIAL COMPREHENSIVE CLAIM SETTLEMENT

### Lands and Resources

The continued use and occupancy of the land and the harvest of renewable resources are considered fundamental to native lifestyle and economic self-reliance. On the basis of this premise and the requirement of aboriginal use and occupancy of the land, the province will contribute lands and renewable resources to a land claim settlement.

**Land Regime**

Lands which may be set aside for claims beneficiaries for their continuing use should be lands which both meet the province's criteria of aboriginal use and occupancy, and which are currently used and occupied by the claimant group. Claims negotiations may result in a land regime differentiated on the basis of sole use and occupancy of beneficiaries (Category I), exclusive harvest rights (Category II) or preferential harvest rights (Category III).

**Public Rights and Interests**

The rights and interests of the general public must be protected in the negotiation and settlement of comprehensive land claims. Projects and activities for the public good and rights of public access must be protected during negotiations.

**Third Party Rights and Interests**

All legitimate third party interests will be protected in the negotiation of comprehensive land claims. In the event that any such interest is adversely affected by a land claim settlement, that particular interest must be dealt with fairly and equitably. The basis on which third party interests are to be treated will be determined in the Framework Agreement.

## Renewable Resources

### Wildlife

Claim beneficiaries may be granted wildlife harvest rights in the claim settlement area on the basis of exclusive and/or preferential rights in specified areas of land based on traditional use.

### Fisheries and Aquatic Resources

The 1986 federal Comprehensive Land Claims Policy statement recognizes that fisheries and marine renewable resources may be discussed in tripartite land claims negotiations on the basis of exclusive and/or preferential harvest rights. However, the existing rights of provincial fishermen and corporations to harvest marine resources in the claim area must be respected. Any allocation of the fisheries resource must be based on the principles of traditional use, sound conservation practices and fair allocation to all eligible harvesters in the claim area.

The province may also consider inland waters as areas where wildlife and fisheries harvest rights could be granted. The extent of these rights would be determined through negotiation based on the model of exclusive and/or preferential use and occupancy.

**Water Resources**

The province shall retain the water management rights throughout the claim area, including but not limited to the exclusive rights related to the development and production of hydro electric energy and the transmission thereof.

**Forest Resources**

Traditional use of forest resources within the claim area may be a subject of negotiation.

**Non-Renewable Resources**

Provincial involvement in the negotiation and settlement of aboriginal land claims is based on traditional use of renewable resources by aboriginal peoples. The province is prepared, however, to consider exclusive and/or preferential use of certain surface-occurring materials in sites traditionally used by potential claim beneficiaries since time immemorial. Allocation of or rights to other non-renewable resources, marine or terrestrial, will not be included in the negotiations. However, the province is prepared to discuss means to enable claims beneficiaries to avail of economic opportunities within the claim settlement area.

**Environmental Management**

Claim beneficiaries will be given the opportunity to provide

advice concerning the use and management of lands and resources throughout the claim settlement area.

**Provisional Measures**

The province will consider the implementation of appropriate measures whereby land claim beneficiaries may be informed and consulted in the matter of major development activities affecting the recognized claim settlement area. Such consultation shall be without prejudice to the position of the parties involved with respect either to the claim negotiations or the development activity. These provisional measures may be implemented on a case-by-case basis if major development activities occur during the course of negotiations.

**Social and Economic Development**

The province is prepared to discuss means of promoting social and economic development in the communities directly affected by a land claim settlement, providing these means are consistent with provincial resource development objectives.

The lands and resources components of a land claim settlement should be based on traditional use and harvest of surface resources. Traditional resource harvest activities can assist in promoting both individual and community self-reliance as well as provide a basis for commercial development. Settlements should also recognize the need for appropriate measures to enable beneficiaries to avail of economic

opportunities within the claim settlement area in order to enhance economic and social development.

## Financial Elements

### Financial Compensation

Financial compensation to claim beneficiaries is the sole responsibility of the federal government and will be a major component of a land claim settlement. Such financial compensation should provide claim beneficiaries with access to the necessary capital, to utilize lands and resources acquired through a land claim settlement, and to pursue their economic and social goals.

### Taxation

Financial compensation is regarded as a capital transfer and therefore will be exempt from federal and provincial taxation. Income derived from compensation will be subject to prevailing taxation legislation and practices. In all other respects, the normal taxation provisions of the province shall apply.

## Provincial Programs and Services

The province will continue to assume the responsibilities and costs for programs and services to claim beneficiaries on the same basis as it provides programs and services to all residents of the province. The province maintains that the federal

government is responsible for programs and services to all native peoples in Canada and also that land claims beneficiaries in Labrador remain eligible for all federal programs of general application provided to Inuit and Indians throughout Canada.

## Other Components

### Self-Government

Appropriate self-government institutions may be discussed and negotiated within the context of a land claim settlement.

### Overlapping Claims

All legitimate overlapping claims between native groups resident in Labrador should first be discussed by the native groups concerned. The province will not enter into a final settlement concerning lands within the area of claim overlap until the native parties have reached a satisfactory mutual agreement.

Crossboundary claims by native groups that are not residents of Labrador may be addressed only after the settlement of all claims to that specific area by the resident Labrador natives.

## CONCLUSION

These elements of a potential land claim settlement provide the basis for provincial participation in tripartite negotiations. Although the fundamental parameters of settlement components must be retained if government is to perform its role as guarantor of the rights and interests of all provincial residents, this does not imply that the policy is static or immune from evolution. As negotiations proceed, this provincial policy framework may develop to meet the challenge of new ideas and changing circumstances, to more effectively achieve the objectives stated at the outset of this paper.